

COMMENT/ARGUMENT

Claims 1-11 have been withdrawn, claims 12-22 remain in the case. Claims 12-15 and 17-22 have been amended.

An example of the claimed invention as set forth in the present case can be found in claim 17:

17. (Currently amended): The method of servicing a vending machine, comprising the steps of:

- a) polling said machine, compiling sales and cash flow data, providing a data stream;
- b) repeatedly transmitting said data stream, utilizing a **monodirectional RF transmission only**, providing a transmission within a reception area;
- c) repeating steps a-b, while
- d) providing a service vehicle having product inventory for said vending machine;
- e) positioning said service vehicle within said reception area;
- f) receiving said transmission in said reception area, providing a received data;
- g) providing sales and cash flow data for the vending machine, providing a picking ticket;
- h) pulling inventory from said service vehicle based upon said picking ticket, providing pulled inventory;
- i) stocking said vending machine utilizing said pulled inventory;
- j) discerning vending machine activity relating to coin box or product inventory changes from the period of reception of said received data at the service vehicle, to the point where each vending unit is opened for

replenishing inventory; and

k) resetting each vending machine at said machine location, so as to include the inventory stocked in each machine in step "I".

Claim 18 depends upon claim 17, adding the additions steps of:

"l. adjusting said received data to accommodate said vending machine activity in step "I", so as to balance out each vending machine, providing adjusted received data; and

m. providing said adjusted received data to a base office."²

The present invention teaches a novel and innovative approach in conveying data to a route driver in a service vehicle during a service call. Unlike prior art methods utilizing complex and expensive transceivers, either in the form of cellular infrastructure, satellite, telephone, or two-way radio, the present invention, as configured, conveys the data to the service vehicle at a pre-designated reception area in the general vicinity of the vending machines (up to one mile, line of site in the preferred embodiment) utilizing a single transmitter and a receiver.

In previous methods, conveying data required the use of transceivers and a handshake sequence for feeding the data in a reliable manner to the recipient. While the transceivers also allowed, to some degree, remote control and monitoring capabilities, these benefits could often be offset due to the costs of implementation, which included not only equipment, but also very often monthly service fees for use of the medium conveying the transmission.

In contrast, the present invention does not require subscription fees, and the equipment is substantially less expensive to procure and install than prior art systems. As indicated above, use of transceivers in prior art systems allowed for the recipient of the vending data to communicate with the transmitter (as in the handshake context), to initiate and validate the reception of the data. In a

one-way data transmission context (as with the present invention) the user has no way to transmit information from the reception area to the transmission area to initiate and validate the reception of the data. However, in the present invention , other techniques have been developed to compensate.

The present invention, instead of relying upon feedback (as in a handshake) to initiate and validate communications, the vending machine transmitters are configured to transmit updated vending machine data at intervals, the signals specifically configured to reach a pre-designated reception area where the service vehicle would park for the service call. As earlier indicated, the service operator would utilize a receiver to receive the transmission, and prepare a "picking ticket", which data may also be conveyed to a portable, preferably hand held unit.

The "picking ticket" designates each vending machine as well as information relating to vending inventory required to replenish the machine, and may also include coin box or change information to replenish change in the machine.

It is not uncommon that the vending machine(s) are utilized by customers between the period of preparation of the "picking ticket" at the service vehicle and actual servicing and resetting of the machine.

With a "real time" two-way transmitter system as taught in the prior art, such an intermediary vending event would generally not be an issue, as the event would be recorded and conveyed to the central office.

However, with the system of the present invention, which requires resetting of each vending machine upon servicing, such an intermediate vending event would result in an error in the data conveyed to the main office (if the information originally received at the service vehicle to generate the "picking ticket" was not adjusted), in the form of vended goods and/or coin/change which does

not "balance out".

To overcome this problem, the present invention further provides the following "coin box balance feature" to compensate for change in coin box or product inventory between the preparation of the picking ticket and the actual servicing of the machine.:.

"In addition to inventory data, the present system also compiles and transmits coin box activity, which can be used in implementing a coin box balance feature by the route operator. In such an application, a portable computer displays activity relating to coin box or product inventory changes from the period of reception at the service vehicle to the point where the unit is opened for replenishing inventory and emptying the coin box, so that the operator may properly balance out the unit." (p. 2, line 28 to p. 3, line 9 of application)

As indicated on page 2, lines 10-13):

"The service van receives data from a transmitter assembly, which is configured to interface with a portable computer device, which device displays or otherwise utilizes the received data to compile and communicate inventory, operational status, cash box, or other information for the operator to use in replenishing and servicing the machine(s)."

As indicated on page 7, lines 16-18:

"coin information may also be provided so as to replenish change stock in the machine and information as to the amount of cash to be brought back to the corporate office".

As indicated in lines 6-16, page 9:

"The coin data provided in the data stream allows the service personnel to convey to each machine the exact amount of change necessary to restock the coin tubes, thereby reducing the amount of monies carried by the personnel. The total amount of money in the cash box for each machine may be included in the data stream transmitted to the receiving unit, as indicated, so that the portable computer may be brought to the home office after completion of the route, the information on the inventory stocked, changed dispensed and monies received by each machine downloaded into the computer, and the information utilized for the records to verify the monies and stock returned by the driver.

During each route, upon replenishing the machine, the route operator will activate a reset switch for each machine in order to reset the counters within the

monitor unit, indicating that the machine has been fully stocked.”

And lastly, as indicated on page 19, lines 15-26:

“The software on the hand held or portable computer should allow the service personnel to adjust the inventory level on each machine for each product, so that accurate product requirements can be calculated. For example, if a machine will hold 20 pieces of product in one selection, and the driver only leaves 18 units in the machine when it is finished being services, then the software on the portable computer must account for the shortage of these two units.

Since the vending machine may only provide information on the number of units that were sold from the machine, in order to provide the employee with an accurate count, the software in a portable computer should add the two that were missing to the value provided by the vending machine. An example would be if the vending machine indicates that five product were sold but we know that the employee left two units empty in the machine the last time, then the portable software should indicate that seven units area required.”

The above “coin balance feature” insures that there is no discrepancy in the information as to “amount of cash to be brought back to the corporate office” due to vending events between the generation of the picking ticket and the service of the vending machine.

In combination, it is believed that the claimed method of the present invention provides a unique, innovative and accurate system for servicing vending machine(s) from a service vehicle in a manner which requires much less equipment investment than prior art systems, and with no subscription or service plan requirements for conveying the data.

As earlier iterated, each of the independent claims in the case also specify with particularity that the data stream is conveyed (i.e. “transmitted”) to the reception area utilizing a technique consisting of repeated, monodirectional or one-way RF transmission only. Accordingly, the present system requires a transmitter only at the vending machine, and a receiver at the service vehicle, which is positioned in the pre-designated reception area to receive the transmitted data.

The Examiner cites Varga et al as “well known to: have one way communication between vending machine and remote processing center (See for example paragraph 0004 and 0018); the data transmission being RF transmission (See for example paragraph 0048).”

The undersigned respectfully disputes the Examiner’s interpretation of the cited provisions of Varga as teaching a “one way communication” of “RF transmission” in any particular detail to enable one of ordinary skill to practice the alleged anticipated invention. In fact, these citations could be interpreted as lending credence to the patentability of the present invention.

For Example, Varga cited paragraph 0004 is a summary of the invention of previously cited Schwartzendruber ‘784 (since withdrawn) acknowledging that ‘784 in fact requires two-way communication between the vending machine and remote monitoring center (see line 10-11), followed by the statement “providing similar capabilities using one-way communications can reduce cost”. This statement, cited by the Examiner, certainly does not anticipate applicant’s claimed invention, rather we interpret it to comprise merely a recognition that a system employing one way communication only would be an improvement over the prior art ‘784 reference.

The Examiner then cites paragraph 0018 as further support that Varga contemplates a system utilizing “one way communications”. While such a term is acknowledged as being used in said paragraph 0018, no such embodiment is believed taught in Varga. Rather, the equipment illustrated in the figures and discussion in the specification does not teach with particularity a transmitter/receiver system configured for one way communications in the manner contemplated by the present claimed application, but rather a black box “communication means” 200, 302, which can comprise a modem, characterized as a “ a network modem, such as a network radio modem or a public service telephone modem” (paragraph 0039), which we had shown in earlier replies did not

comprise one channel communications from a transmitter to a receiver, but rather comprised two-way communications channels requiring a handshake, or at least a two-way telephone system or the like for implementation.

When Varga subsequently mentions “radio transmission” in paragraph 0048 (cited by the Examiner), it is believed that Varga is referring to the “network radio modem” earlier referenced in paragraph 0039, which again is in fact not a one-way communication in the manner taught and claimed in the present application. Thus, Varga is no different than the previously cited Schwartzendruber, which likewise utilized a modem, and which likewise was not in fact a one-way channel of communications as referenced when applicant claims a “monodirectional data transmission” (see pages 9-13 of Response in the present case dated 2/20/2006). Thus, while Varga may utilize the term “one way” in the specification, there is in fact no enablement of a truly “one way” system which would allow one of ordinary skill in the art to practice the invention without undue experimentation, which is the standard which must be applied.

Thus, once again it is reiterated that the system combination taught and claimed in the present application is believed uncontemplated in the prior art, comprising a useful, original and unobvious innovation which has made possible the BUZZBOX ® brand curbside polling system, which is unique in the industry as well as enjoying nationwide recognition, as has been earlier established in the earlier declarations from industry experts and exhibits comprising articles from major media outlets (see exhibits associated with the Response in the present dated 09/29/2004), and most recently the NAMA White Paper as referenced in the Supplemental Response dated May 12, 2006 recognizing the BUZZBOX ® brand curbside polling system (the product under the present application) as being the only product recognized for “curbside polling” of vending units .

Unlike Sedam, Beard or Varga, the mono-directional transmission technique detailed in the claims of the present invention, combined with the other steps enumerated in the method claims, teaches a system wherein the transmitter has been configured to in effect transmit "blind" (i.e., with no information or guidance as to status of the receiver), while maintaining and accurate and timely accounting of the vended goods and cash reported to the main office. This is compared to Sedam, Varga, Beard et al, which relies upon feedback in some form from the receiver, either in the form of a transceiver, modem, or the like.

Based on the above and foregoing, neither Sedam, Beard, Varga et al, alone or in combination, teach, suggest, or otherwise contemplate the method of conveying the data stream to the reception area utilizing a repeated "mono-directional RF transmission only" which is periodically refreshed, as set forth in the claims. Once again, each of the cited patents by the Examiner teach specifically the use of transceivers, modems, or like apparatus facilitating and/or requiring, in one manner or another, bi-directional communications. One could not simply cut off one channel of the bi-directional communications of Sedam, Beard, or Varga et al and indicate that they would work the same, or otherwise contemplate the present invention in some manner. Such is clearly not the case. The present invention not only relates to a single channel communication path from the vending machine(s) to the service vehicle only, the invention further include specific methodology as set forth in the claims and iterated above which is not contemplate or suggested, alone or in combination, by the cited prior art.

In the earlier filings, the applicant has provided detailed declarations of non-obvious by credible experts in the industry (including Mr. Tim Sanford¹, editor-in-chief of the nationally

¹ See 1.312 Affidavit Dated 27 September 2004, filed in the present case 29 September 2004.

recognized trade publication VENDING TIMES) relating to the inventive claimed features of the present system, and the prior art has clearly failed to teach or anticipate the combination of the claims as set forth in the present invention, for reasons discussed above.

As indicated in our earlier filings, the Federal Circuit has made it very clear that secondary considerations must be considered when they are present, and are given equal weight to the primary consideration. WL Gore & Assoc v. Garlock, Inc., 721 F2d 1540, 1555, 220 USPQ 303, 314 (Fed Cir 1983) cert denied 469 US 851 (1984). Not only has there been presented declarations of non-obviousness from experts, but there has been a clear showing of commercial success, and detailed declarations establishing the nexus between the commercial success and the invention, which must be given serious consideration. Demaco Corp v F Von Langsdorff Licensing Ltd 851 F2d at 1392, 7 USPQ2 at 126 (Fed Cir 1988), cert den 488 US 956 (1988).

It is respectfully reiterated that these declarations cannot be ignored, but must be overcome by the Examiner with clearly relevant prior art teachings which on their face anticipate the claimed invention, with a 1) motivation to combine; and an 2) expectation of success², neither of which has been shown with the references cited. Accordingly, the claims are deserving of patent protection, and same is respectfully requested.

As earlier indicated, in order for a claim to be obvious under the prior art under 103, there must have been some explicit or implicit suggestion or motivation in the prior art to combine, substitute or otherwise modify the prior art in a way to produce the claimed invention. The "differences between the subject matter to be patented and the prior art" must be such as to render the "subject matter as a whole" obvious. As earlier indicated, it is inappropriate to use hindsight

²Brown & Williamson Tobacco Corp v. Phillip Morris, Inc. 229 F3d 1120, 56 USPQ2d 1456 (Fed Cir 2000).

guided by the applicants disclosure. In the present case, the Examiner admits the invention of applicant is novel, that the product under the invention has "strong evidence" of commercial success.

Brown & Williamson Tobacco Corp v. Phillip Morris, Inc 229 F3d 1120, 56 USPQ2d 1456 (fed Cir 2000), reminds us that a showing of obviousness requires a motivation or suggestion to combine or modify prior art references, coupled with a reasonable expectation of success, and that the initial burden is on the examiner to make a rebuttable prima facie case of obviousness based upon the prior art. In re Rinehart 531 F2d 1048, 189 USPQ 143 (CCPA 1976).

Applicant respectfully reminds the Examiner that the applicant for a patent has no burden to show proof of non-obviousness until a prima facie case has been made by the examiner. **Neither Sedam, Beard, nor Varga, alone or in combination, show or anticipate the claimed invention, nor has there a showing of motivation or suggestion of combination of these references to teach the invention as claimed in the present application, which contemplates a much different system, requiring different equipment and technique than the prior art.**

Thus, on reconsideration, it is respectfully submitted that the present claims should be allowed as being patentable under 35 U.S.C. 103.

If additional issues remain, and the Examiner is of the opinion that same could be resolved by telephone amendment, the undersigned respectfully requests same at (985) 845-0000.

Conditional Request for Constructive Assistance

Applicant has amended the specification and claims of the present application so as to provide a proper, definite and novel structure which is also believed to be unobvious. If the Examiner is of the opinion that the application is still not in full condition for allowance, the undersigned respectfully requests the constructive assistance and suggestions of the Examiner

pursuant to MPEP Section 707.03(d) and 707.07(j), so that the undersigned can place the application in allowable condition as soon as possible, and without the need for further proceedings.

Respectfully submitted,


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